

STATE OF MICHIGAN  
COURT OF APPEALS

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KENNETH SCARGALL,

Plaintiff-Appellant,

v

RANDY LEE WHITMORE,

Defendant,

and

EASTPOINTE'S VFW POST #6782, a/k/a  
RACHELLE SHAFER POST,

Defendant-Appellee.

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UNPUBLISHED

August 6, 2002

No. 231718

Macomb Circuit Court

LC No. 99-005354-NO

Before: Murray, P.J., and Sawyer and Zahra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the circuit court's order dismissing his dramshop action against defendant Eastpointe's VFW Post #6782. Defendant VFW Post moved for summary disposition based on plaintiff's failure to retain the alleged intoxicated person, defendant Whitmore, in the litigation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After filing suit against both defendants, plaintiff sought and obtained a default and default judgment against defendant Whitmore. Defendant VFW Post moved for summary disposition on the basis that plaintiff failed to retain Whitmore in the litigation as required by MCL 436.1801(5). Plaintiff then moved to set aside his default judgment against Whitmore. The circuit court denied plaintiff's motion to set aside the default judgment against Whitmore and granted summary disposition for defendant.

On appeal plaintiff argues that the circuit court abused its discretion by refusing to set aside the default judgment pursuant to MCR 2.612(C)(1)(f). We disagree. An attorney's negligence is attributable to the client and is normally not grounds for setting aside a default judgment. *Park v American Cas Ins Co*, 219 Mich App 62, 67; 555 NW2d 720 (1996). Plaintiff did not assert any extraordinary circumstances which would justify setting aside the default judgment under MCR 2.612(C)(1)(f), so the circuit court did not abuse its discretion by refusing

to do so. *Heugel v Heugel*, 237 Mich App 471, 479; 603 NW2d 121 (1999). Since plaintiff did not retain Whitmore in the lawsuit, the circuit court properly dismissed plaintiff's dramshop claim. MCL 436.1801(5).

Affirmed.

/s/ Christopher M. Murray  
/s/ David H. Sawyer  
/s/ Brian K. Zahra